



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 12, 1996

Ms. LaRonica Lightfoot
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-1129

Dear Ms. Lightfoot:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40179.

The City of Dallas (the "city") received a request for information concerning a theft complaint filed with the city police department. The requestor sought "copies of all of the documents and correspondence that the complainant" provided the police department. You state that the complaint "appears to be under active investigation" and that the information at issue should be withheld from disclosure pursuant to section 552.108 of the Government Code.¹

The receipt stamp on the request shows the city received it on April 3, 1996, however, the city did not request a decision from this office until April 17, 1996. See Gov't Code § 552.308(1) (timeliness of request can be determined by post office cancellation mark). Section 552.301 of the Government Code provides that:

¹You also asserted that section 552.101 was applicable, but failed to explain why you believed section 552.101 might be applicable. Pursuant to section 552.301(b), a governmental body is required to submit to this office written comments stating the reasons why stated exceptions would apply. Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile that you needed to submit written comments explaining why section 552.101 was applicable. However, you did not submit the requested written comments.

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). As section 552.108 is a discretionary exception that can be waived, you have waived your section 552.108 argument by failure to timely submit your request to this office; and may not withhold this information under section 552.108. *See* Open Records Decision No. 216 (1978) at 2 (section 552.108 is discretionary exception).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 40179

Enclosures: Submitted documents

cc: Mr. Ted Steinke
770 Founders Square
900 Jackson Street
Dallas, Texas 75202
(w/o enclosures)